

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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N.Y.
11/14/2005

BETHEL HUGHES,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

X

:

05 CV 2752 (ARR)

:

NOT FOR ELECTRONIC
OR PRINT
PUBLICATION

:

OPINION AND ORDER

X

ROSS, United States District Judge:

The pro se petitioner Bethel Hughes (“petitioner” or “Hughes”) filed the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2255 on May 26, 2005. Petitioner pled guilty to one count of knowingly and intentionally obstructing, delaying, and affecting commerce, in violation of 18 U.S.C. § 1951, on November 24, 1997. Hughes’ petition states four grounds for relief, challenging the calculation of his range under the Sentencing Guidelines and asserting that his counsel rendered ineffective assistance for failing to object to that calculation.

Hughes’ petition is untimely. A one-year statute of limitations applies to motions filed pursuant to 28 U.S.C. § 2255. The limitations period runs from the latest of:

(1) the date on which the judgment of conviction becomes final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. § 2255.

Hughes pled guilty on November 24, 1997, and judgment was entered on December 4, 1997. Hughes' conviction became final on December 14, 1997, upon the termination of the ten day period in which Hughes could have filed a notice of appeal. Accordingly, under 28 U.S.C. § 2255(1), the one-year limitations period expired on December 14, 1998, almost six and one-half years before Hughes filed the instant petition on May 26, 2005.

The court has no basis to believe that subsection (2) or (4) applies. To the extent that petitioner intends to invoke the Supreme Court's opinions in Apprendi v. New Jersey, 530 U.S. 466 (2000), and United States v. Booker, 125 S.Ct. 738 (2005), the court cannot find that Hughes' petition is timely under subsection (3). Guzman v. United States, 404 F.3d 139, 144 (2d Cir. 2005) (holding that Booker does not apply retroactively to cases on collateral review that were final as of January 12, 2005); Coleman v. United States, 329 F.3d 77, 82 (2d Cir. 2003) (holding that, in calculating the limitations period for a petition raising an Apprendi claim, subsection (3) does not apply because Apprendi is not retroactive).

Hughes' petition for a writ of habeas corpus is barred by the limitations period, which expired on December 14, 1998. The petition is thus dismissed as untimely. Because petitioner has failed to make a "substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), no certificate of appealability will be granted. The petitioner has a right to seek a

certificate of appealability from the United states Court of Appeals for the Second Circuit. See
28 U.S.C. § 2253.

The Clerk of the Court is directed to enter judgment accordingly.

SO ORDERED.

Allyne R. Ross
United States District Judge

Dated: June 13, 2005
Brooklyn, New York

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